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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,963	10/05/2005	Thomas Roderer	4266-0109PUS1	6129
2292 7590 06/04/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER MARKOFF, ALEXANDER				
ART UNIT		PAPER NUMBER		
1792				
NOTIFICATION DATE		DELIVERY MODE		
06/04/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/551,963

Applicant(s)

RODERER ET AL.

Examiner

Alexander Markoff

Art Unit

1792

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date 2/3/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 02/03/09 fails to comply with 37 CFR 1.97(d) because it lacks the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-6 and 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to all claims:

The claims are indefinite because it is not clear what is referenced as "normal operation of the automatic dishwasher".

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-6 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eberhardt, Jr. (US Patent No 4,561,904) in view any one of Knight (US Patent No 3,249,150) and Fox et al (US Patent No 3,254,698).

It is again noted that the applicants have not defined what is referenced as "operating mode". Any every day operating of the dishwasher is readable on the recited modes if they not differentiated by recitation of manipulative steps required.

Eberhardt, Jr. teaches a dishwasher with the belt, curtains and automatic control functions, which includes an automatic cut-off function, which is controlled using light barriers. See entire document especially Figure 1 and the related description.

It is noted that during operating the dishwasher the belt 24 is cleaned by the dishwasher as well as the dishes on the belt.

Eberhardt, Jr. does not specifically teach providing an overload breaker for the motor of the belt.

However, providing breakers for electrical devices was conventional in the art.

This is evidenced by Eberhardt, Jr.

Eberhardt, Jr. teaches overload breakers for heaters.

It would have been obvious to an ordinary artisan at the time the invention was made to provide a cut-off breaker for the belt motor in Eberhardt, Jr. to prevent hazard associated with overloading an electrical device.

The claims require the use of exclusive curtains during a specifically named operation.

Such is readable on the operation of the dishwasher of Eberhardt, Jr. after changes of the curtains due to maintenance requirements.

The fact that the curtains are periodically changed during the lifetime of the dishwashers is evidenced by Knight and Fox et al

It would have been obvious to an ordinary artisan at the time the invention was made to change the curtains in Eberhardt, Jr. when such is required by the state of the curtains.

Eberhardt, Jr. does not specifically call the operation modes of the dishwasher as "Cleaning of dishes for milk products", "Cleaning of dishes for meat or meat products" and "Sabbath operation", however naming the operations by different names without reciting different manipulative steps does not differentiate one operation from another. None of the specific operating steps is disclosed for "Cleaning of dishes for milk products", "Cleaning of dishes for meat or meat products". The manipulative steps recited for the "Sabbath operation" are disclosed by or obvious over Eberhardt, Jr.

The claims require the use of the fluid, which has a temperature higher than the temperature of the fresh water.

Eberhardt, Jr. does not specifically state that the temperature of the water, which is used for cleaning is higher than the temperature of the fresh water.

However, Eberhardt, Jr. uses heaters (68 and 88) to obtain needed temperature.

It would have been obvious to an ordinary artisan at the time the invention was made that the temperature of the cleaning liquid in Eberhardt, Jr. is higher than the temperature of the fresh water introduced in the dishwasher.

Response to Arguments

8. Applicant's arguments filed 2/3/09 have been fully considered but they are not persuasive.

The applicants amended the claims and argue that the previously applied rejections are not proper.

The examiner would like to note that many rejections were obviated by the amendment.

However, the claims still do not defined what is referenced as "operating mode". Any every day operating of the dishwasher is readable on the recited modes if they not differentiated by recitation of manipulative steps required.

Eberhardt, Jr. does not specifically call the operation modes of the dishwasher as "Cleaning of dishes for milk products", "Cleaning of dishes for meat or meat products" and "Sabbath operation", however naming the operations by different names without reciting different manipulative steps does not differentiate one operation from another. None of the specific operating steps is disclosed for "Cleaning of dishes for milk products", "Cleaning of dishes for meat or meat products".

The claims require the use of exclusive curtains during a specifically named operation.

Such is readable on the operation of the dishwasher of Eberhardt, Jr. after changes of the curtains due to maintenance requirements. The sequence of the

cleaning dishes in a conventional way during the time in which the curtains are changed twice would be readable on the sequence of three different modes with exclusively used curtains.

The examiner understands that what a method disclosed in the specification is different from the applied art. However, the instant claims are not limited to the disclosed method and are obvious over the applied art.

It is noted that the claims are not limited to providing a dishwasher provided with three different set of curtains. The claims are not limited to suspending a specific set from these three sets for a specific operation mode. The claims are not even limited to cleaning dishes used with milk product during or cleaning dishes used with meat products during the recited "modes". The claims are not even limited to differentiate the "kosher" mode from a mode of cleaning dishes.

The applicants state that the references, which were not supplied with the IDS filed 10/5/05 should have been forwarded or obtained from IB WIPO upon commencement of prosecution of the instant 371 application.

This is not persuasive because the IDS filed 10/5/05 failed to comply with 37 CFR 1.98(a)(2), which require a legible copy of each copy of the cited foreign patent document.

The information disclosure statement filed 02/03/09 fails to comply with 37 CFR 1.97(d) because it lacks the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Markoff whose telephone number is 571-272-1304. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alexander Markoff
Primary Examiner
Art Unit 1792

/Alexander Markoff/
Primary Examiner, Art Unit 1792